



May 27, 1999

Mr. James J. Savage
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-1478

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124481.

Harris County (the "county") received an open records request for four categories of information pertaining to the county's trunked radio system. You state that some information responsive to items 1 and 4 has been released to the requestor. You contend, however, that other information responsive to items 1, 2, and 3 is excepted from required public disclosure.

The requestor first seeks the following information:

a numerical listing of all manufacturers and model numbers of any and all radios utilized on the Harris County trunked radio system and a designation as to on which system they are being accessed, to include a description of each system, i.e. system 2A28 or 2318 or others

You state that the county has released to the requestor a list of radio equipment purchased by the county. With regard to the respective systems on which the equipment is being utilized, you have submitted an affidavit executed by a representative of the county's Central Technology Center which states that

[a]ll Harris County radios access our new radio System 2318 which is a Motorola SmartZone system. System 2A28 is our older Motorola Smartnet radio system which will be discontinued as soon as all departments and outside agencies are moved to System 2318. Radios

are moved on a daily basis and there is no way to determine which model numbers are used on system 2A28 at any given time.

Given this representation, it appears that the county is unable to obtain accurate information that is responsive to the request. The Public Information Act does not require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982). The county therefore need not comply with this particular request.

The requestor next seeks "information concerning the programming of each of the above-reverenced radios," including hardware and software programming. The requestor also seeks the related "nomenclature" for the hardware and software, which this office interprets as the programming documentation. You contend that this information is excepted from required public disclosure pursuant to section 552.108(b)(1) of the Government Code, which protects "[a]n internal record or notation of a law enforcement agency . . . that is maintained for internal use in matters relating to law enforcement . . . if release of the internal record or notation would interfere with law enforcement." You explain that the release of this information

would interfere with law enforcement or prosecution by allowing the public to develop cloned radios that could intercept and divert communications directed towards specific Harris County law enforcement personnel. The possibility of such diversions would prevent reliable and effective emergency communications and other uses of the system by Harris County law enforcement personnel.

Based on the above representations, we conclude that you have met your burden of demonstrating that the release of the programing information could interfere with law enforcement. The county therefore may withhold this information pursuant to section 552.108(b)(1) of the Government Code.

The requestor also seeks "your understanding of the manufacturer's position regarding the availability of" the hardware and software related information to individuals not associated in an official capacity with the county. In the same affidavit referenced above, it is stated that the county possesses no responsive records "other than the contract with Motorola." You have not argued that the contract between Motorola and the county is excepted from required public disclosure. The county therefore must release a copy of the contract to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/eaf

Ref.: ID# 124481

cc: Mr. Charles McCallister
P.O. Box 7406
Houston, Texas 77248